

**(1998) 09 AP CK 0037**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 4384 of 1997 and batch**

Venkataramana Rice and General Merchants, Gudivada,  
Krishna District

**APPELLANT**

**Vs**

Government of A.P., Legislative Affairs and Justice, Law  
Department and others

**RESPONDENT**

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**Date of Decision : 25-09-1998**

**Acts Referred:**

Andhra Pradesh Rural Development Act, 1996 — Section 3, 5, 6(5), 7, 8

Central Sales Tax Act, 1956 — Section 14, 15

Constitution of India, 1950 — Article 14, 19, 266, 286, 286(2)

**Citation : (1998) 6 ALD 449 : (1998) 6 ALT 74**

**Hon'ble Judges : Umesh Chandra Banerjee, C.J;P. Ramakrishnam Raju, J**

**Bench : Division Bench**

**Advocate : Mr. P.R. Prasad, for the Appellant; Government Pleader, for Taxes, for the Respondent**

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## **Judgement**

P. Ramakrishnam Raju, J.—In this Batch of writ petitions, the Constitutional validity of the Andhra Pradesh Rural Development Act, 1996 is being challenged as violative of Article 286(2) of the Constitution of India on the ground that the State Legislature is not competent under any of the entries in list II of the VII Schedule to the Constitution to levy Rural Development Cess and consequently to quash the individual demands issued by the first respondent demanding cess from the writ petitioners.

2. Most of the petitioners are registered firms, while some of them are individual traders engaged in the business of rice milling. They are regularly submitting returns to the Commercial Tax authorities reflecting their turnovers of purchase of paddy as well as sale of rice every year and accordingly tax is being paid. While so, the State of Andhra Pradesh enacted A.P. Rural Development Act, 1996 - hereinafter called "the Act" purporting to levy cess which is in the nature of a tax which does not fall under any of the entries in List-II of the VII Schedule to the Constitution, under which, the State Legislature can levy a tax. Entry 66

empowers the State to levy fees in respect of any of the matters enumerated in List-II. Entry 54 deals with taxes on the sale or purchase of goods, but the cess levied u/s 7 of the Act is not a fee, inasmuch as a fee is defined as a charge for special service rendered to individuals by Governmental Agencies. It is absolutely necessary that the levy of a fee should on the face of the legislative provision be correlated to the expenses incurred by the Government in rendering the services. According to Section 2(1)(b) of the Act cess is defined as "cess levied and collected u/s 7 of the Act". Section 7 of the Act provides for imposition of cess at the rate of 5 per cent on the ad valorem on the quantum of purchase of goods. If the cess is levied and collected on first point of purchase of goods, no cess shall be levied at subsequent point of sale or purchase. Section 8 contemplates constitution of a fund called A.P. Rural Developmental Fund, and according to Section 9, the said fund shall be applied (i) to provide and accelerate comprehensive rural development including construction of rural roads and bridges (ii) to augment storage facilities for storing agricultural produce; and (iii) for maintaining and strengthening of public distribution system. It is constitutionally impermissible for the State Government to collect any amount which is not strictly a fee in the guise of a fee. If tax is imposed in the guise of a fee, it is for the Court to scrutinise the scheme of the said levy and determine its real character and on such analysis, if the Court finds that the levy is in fact a tax and not a fee, its validity cannot be justified by the State unless the same is brought under one or other of the permissible entries in List-11 of the VII Schedule to the Constitution. The Parliament has already enacted the Central Sales Tax Act, pursuant to Clause (iii) of Article 286 of the Constitution. Section 14 of the Central Sales Tax Act declares certain goods including paddy to be of special importance in Inter-State trade of commerce. Section 15 places certain restrictions in regard to levy of tax on sale or purchase of declared goods within the State. Paddy which is a declared commodity is shown as item No.21 of the III Schedule of A.P. General Sales Tax Act, 1957 and is subjected to tax at 4 per cent at the point of first purchase in the State; so also the commodity rice is shown as item No.22 of the III Schedule and it is again made liable to tax at 4 per cent at the point of first sale in the State. Sub-clause (c) of Section 15 of Central Sales Tax Act states that where a tax has been levied under the State Act in respect of sale or purchase of paddy inside the State, the tax leviable on rice procured out of State shall be reduced by the amount of tax levied on such paddy. A plain reading of these provisions makes it clear that the rate of tax on paddy and rice should not exceed the ceiling of 4 per cent. As the impugned Act seeks to levy cess at 5 per cent on the ad valorem on the quantum of purchase of paddy in terms of Section 7 of the impugned Act which runs counter to Section 15 of the Central Sales Tax Act, the provisions of the said Act are liable to be struck down. As the petitioners have no other effective alternate remedy, they are seeking the writ as prayed for.

3. In the counter-affidavit filed by Deputy Commissioner in the Office of the Commissioner of Commercial Taxes (Courts), it is stated that the impugned

legislation is not enacted pursuant to entry 54 in List-II of the VII Schedule to the Constitution, but it is brought into Statute Book for the purpose of accelerating Rural Development and to improve storage facilities for agricultural produce. The fee for the reason levied and collected at the point of first purchase would not become sales tax. Rural Development Cess is a cess simpliciter levied purely for purpose of rural development and for easy control and collection of the cess. The point of levy is the point of purchase and the Act is being administered by the Commercial Taxes Department. The cess is so collected under the Act purely for local purposes and being utilised for local area would nonetheless be a fee. The allegations of the petitioners that the rural development cess is a tax has no basis. Fee or cess is being levied on paddy and cashewnut which have been identified as major products from rural areas for tapping revenue for the development of those areas. The allegation that there is no nexus between imposition of cess and the objects sought to be achieved is incorrect. The proceeds are remitted into a separate rural development fund which is meant solely for fulfilling the objects envisaged in the Act, and the same is not merged in the general pool of State revenues, nor would they be utilised for the purposes other than those specified in the Act. As such, the levy or the impost cannot be termed as a tax.

4. The objects and reasons for bringing out the Act are more clear, and as it is noticed that the development of the rural areas in the State could not be accelerated due to paucity of funds, the Government felt that there is imperative need to provide financial assistance for development of these areas for creating infrastructure facilities so that the economic activity in the rural areas will increase thereby contributing for the growth of economy. As such, with a view to generating funds for the avowed object of development of rural areas, it is considered desirable to levy cess in terms of Section 7 of the Act. To accelerate comprehensive rural development, including construction of rural roads and bridges and for augmenting storage facilities for storing agricultural produce, cess shall be collected under the Act in exercise of the powers vested in the State by virtue of entries 13, 14, 27 of List-I and entry 33(b) of List-III, read with entries 66 and 47 of List-II and List-III respectively of VII Schedule to the Constitution. Hence, levy is not made under entry 54 of List-I. Further, rural development fund so collected shall be utilised by a Board constituted u/s 3 of the Act headed by the Chief Secretary to the State Government solely for the development of rural areas. Therefore what is being collected does not assume the character of tax, but only a fee. Levy of tax under A.P. General Sales Tax Act and levy of fee under the impugned Act would operate in two different fields. The allegation that imposing cess on paddy alone keeping other commercial crops Outside the purview of the Act would amount to discrimination is not correct; inasmuch as under fiscal Statutes the Legislature would be free to pick and choose any class of persons, goods, objects or transactions which can be subject to tax and the recourse to Articles 14 and 19 of the Constitution is not permissible, It is also stated that the petitioners are not paying the cess from out

of their pockets, but they collect the said cess from Food Corporation of India, A.P. Civil Supplies Corporation etc. Having collected the said amount from the above Governmental organisations in the name of the State, petitioners cannot illegally retain the same for themselves. Therefore, writ petitions are devoid of merit, and they should be dismissed.

5. Let us see the salient features of the Act :

"Board is defined u/s 2(a) of the Act as the Andhra Pradesh Rural Development Board established u/s 3. "Cess" is defined as the cess levied and collected u/s 7. "Fund" means the Andhra Pradesh Rural Development Fund constituted u/s 8. "Goods" is defined as goods specified in the Schedule to the Act; and "Rural Area" is described as the area other than local area included in a Municipality, local area constituted to be a city; area declared as an urban area; and place declared to be a Cantonment under the Cantonments Act, 1924. Section 3 envisages constitution of A.P. Rural Development Board consisting of the Chief Secretary to the Government as Chairman and Principal Secretary to Government, Revenue Department, Secretaries to Government, Food and Civil Supplies, Finance and Planning, Panchayat Raj and Rural Development, Transport, Roads and Buildings Department, Commissioner, Commercial Taxes as members and Director, Civil supplies as Ex-Officio Member. Section 8 refers to the constitution of fund, called A.P. Rural Development Fund which shall vest in the Board. u/s 9, the purpose for which the fund may be expended is specified as one to provide and accelerate comprehensive rural development including the construction of rural roads and bridges; (ii) to augment storage facilities for storing agricultural produce; and (iii) for maintaining and strengthening of Public Distribution System. In the Schedule appended to the Act, two items are included viz., Paddy and Cashewnut as items 1 and 2.

6. After noticing the relevant provisions, it is now necessary to find out whether the Act in question, particularly the charging Section 7 is ultra vires of the powers of the State Legislature.

7. If the impost or fee is in reality a tax under the mask of a fee, its validity can be justified only by bringing it under any one of the entries in List-II of the VII Schedule to the Constitution in relation to which State can levy a tax. On the other hand if the levy is a fee, it is to be found whether the indicia or characteristics of fee are present. Generally speaking tax is compulsory exaction of money by public authority for public purpose and not towards services rendered and the precise definition of "tax" ascribed by Latham C.J. High Court of Australia in *Matthews v. Chicory Marketing Board*. 60 CLR 263, is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered. Tax is levied as a part of common burden by the State while fee is the payment for special benefit or privilege- Justice Mukherjee, as he then was in *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirihai Swamikal of Sri Shirur Mutt*, (1954) SCR 1005, in his illustrious judgment which is often described as locus classicus on the

subject, expressed the view that tax or fee enforced by law for purpose of general revenue, compulsion or coerciveness is present in some degree in both, and if specific services are rendered to a specific area or to a special class of persons or trade or business in any local area and in return cess is levied, the cess is distinguishable from a tax and is described as a fee. If the fee meant for the benefit of specified class or area, the fact that in benefiting the specified class or area, the State as a whole may ultimately be benefitted would not detract from the character of the levy as a fee. If there is quid pro quo for the cess collected by constituting into a specific fund not part of the consolidated fund, its application regulated by a Statute confined to its purpose there is definite correlation between the impost and the purpose of the Act, then in such an event, it is a fee. It is pertinent to note the following observations of Justice Mukherjee :

"It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the tax payer's consent and the payment is enforced by law. The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purpose of general revenue, which when collected forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is, as it is said, no element of quid pro quo between the taxpayer and the public authority. Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the taxpayer depends generally upon his capacity to pay."

8. Although fee is meant in juxtaposition to a tax, it is impossible to find out with mathematical exactitude as to what amount of fee has gone towards the services rendered. Enough if the levy is spent for the avowed object of benefitting a special class of persons or area.

9. In *The Secretary, Government of Madras, Home Department and Another Vs. Zenith Lamp and Electrical Ltd.*, , Chief Justice Sikri, while dealing with a case of Court fee in the context of quid pro quo, observed that the State cannot tax litigation and make litigants pay for roads, building or education or other beneficial schemes. The test is whether there is any relationship with the levy of Court fee with the administration of justice. Chief Justice Wanchoo in *Mohammad Hussain Gulam Mohammad v. State of Bombay*, 1962 (2) SCR 1659, while dealing with the provisions of the Bombay Markets Act, observed that the market was not found to have been properly established under the Act, and therefore held that the Market Committee would not enforce the provisions of the Act as there was no quid pro quo,

10. Justice Chinnappa Reddy speaking for the Bench in *Municipal Corporation of Delhi and Others Vs. Mohd. Yasin*, , observed that compulsion would not be made the sole or even a material criteria for distinguishing a tax from fee. His Lordship in unequivocal terms expressed that even the special benefit or privilege may be

secondary to the primary object of regulation in public interest. It is note-worthy the observations made by the Court that the circumstance that all collections went to the consolidated fund of the State and not to a separate fund may not be conclusive. So, compulsion is not the hallmark of the distinction between a tax and a fee. In other words there is no generic difference between the tax and a fee, as the dividing line is very thin.

11. It is pertinent to notice the following observations of the learned Judge, which are in the following terms:

"It is neither necessary nor expedient to weigh too meticulously the cost of the services rendered etc., against the amount of fees collected so as to evenly balance the two. A broad correlationship is all that is necessary. Quid pro quo in the strict sense is not the one and only true index of a fee; nor is it necessarily absent in a tax."

12. A Constitution Bench of the Apex Court in *Kewal Krishan Puri and Others Vs. State of Punjab and Another*, , has deduced certain principles for satisfying the tests for a valid levy of fee, thus:

"(1) that the amount of fee realised must be earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for this purpose.

(2) That the services rendered to the licensees must be in relation to the transaction of purchase or sale of the agricultural produce.

(3) That while rendering services in the market area for the purpose of facilitating the transactions of purchase and sale with a view to achieve the objects of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special benefit must be conferred on them which have a direct, close and reasonable correlation between the licensees and the transactions.

(4) That while conferring some special benefits on the licensee; it is permissible to render such service in the market which may be in the general interest of all concerned with transactions taking place in the market.

(5) That spending the amount of market fee for the purpose of augmenting the agricultural produce, its facility of transport in villages and to provide other facilities meant mainly or exclusively for the benefit of the agriculturists is not permissible on the ground that such servixs in the long run go to increase the volume of transactions in the market ultimately benefitting the traders also, such an indirect and remote benefit to the traders is in no sense a special benefit to them.

(6) That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is

being spent for rendering services to those on whom falls the burden of the fee.

(7) At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above."

Gradually the view of the Supreme Court underwent radical change.

13. Justice Sen, speaking for the three Judge Bench of the Supreme Court in *Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others*, , observed as follows:

"The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. If the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered. In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specified area or class; it may be of no consequence that the State may ultimately and indirectly be benefitted by it. The power of an Legislature to levy a fee is conditioned by the fact that it must be "by and large" a quid pro quo for the services rendered. However, correlation between the levy and the services rendered expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee and the service rendered."

He went on observing:

"A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. It is now increasingly realized that merely because the collections for the services rendered or grant of a privilege or licence are taken to the consolidated fund of the State and not separately appropriated towards the expenditure for rendering the service is not by itself decisive.""

14. Sri S. Krishna Murthy, learned Counsel leading the batch of writ petitioners submitted that the levy of cess u/s 7 of the Act is nothing but a tax under the garb of a fee. According to him the ingredients of a fee like special service to the individuals by Governmental Agencies are absent in the instant case. There is no correlation between the levy of fee and the services rendered. He also contended that the cess so collected which would be applied for comprehensive rural

development or for augmenting storage facilities for agricultural produce or for maintaining public distribution system does not in any way relate to the petitioners and there is no benefit conferred directly or indirectly upon the petitioners. The Act is violative of the provisions of Article 286 and Sections 14 and 15 of the Central Sales Tax Act. The Act also offends Articles 301 and 304 (B) of the Constitution of India; inasmuch as development of rural areas has already been taken up by enacting A.P. Panchayat Raj and Mandal Praja Parishads and Zilla Parishads Act and as such, the impugned enactment for the very same purpose is redundant.

15. The Act is aimed at development of rural areas in the State by creating infrastructure facilities to accelerate economic activity in the rural areas and thereby contributing for the economic growth of the country. Entry 66 of List-II of the VII Schedule to the Constitution deals with fees in respect of any of the matters in the said list, but not fees taken in a Court. Entry 13 of List-II refers to communications i.e., roads, bridges, ferries and other means of communication. Entry 14 relates to agriculture and 27 refers to production, supply and distribution of goods. Entry 33(b) relates to food stuffs including edible oils and oil seeds. A conjoint reading of these entries clearly points out that the State Legislature is competent to levy fees in respect of agricultural produce, communication facilities like roads, bridges etc. Therefore, and rightly in our view it is not challenged by the petitioners that the State Legislature has no power to levy fees in respect of agricultural produce like paddy or cashewnut as described in the Schedule, but what is challenged is that the impost sought to be collected is not cess or fee but a tax. To substantiate this contention, learned Counsel for the petitioners submitted that there is no quid pro quo or benefit conferred on the petitioners. He relied on decisions of a Constitution Bench of the Supreme Court in *Commr. Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirihai Swamiar of Sri Shrinr Mutt* (supra) and *Kewal Krishan v. State of Punjab* (supra).

16. Sri M. Ramaiah, learned Government Pleader submitted that enough if the benefit of cess is intended for a class of persons as it need not necessarily be passed on to individual members who belong to that class it is still a fee. It is also submitted that the advantages conferred through the fee need not be direct, but may have even a casual relationship; in other words, he submits that the benefit conferred to the rural population as a whole is enough to satisfy the requirement of quid pro quo; inasmuch as rural development is contemplated as part of general regulation of promoting the conditions in the rural areas, and so the requirement of quid pro quo is satisfied. In support of his argument, he relies upon a decision of the Supreme Court in *Southern Pharmaceuticals and Chemicals, Trichur and Others Vs. State of Kerala and Others*, wherein it is observed as follows:

"It is now increasingly realised that merely because the collections for the services rendered or grant of a privilege or licence, are taken to the consolidated fund of the State and are not separately appropriated towards the expenditure

for rendering the service is not by itself decisive. That is because the Constitution did not contemplate it to be an essential element of a fee that it should be credited to a separate fund and not to the consolidated fund. It is also increasingly realised that the element of quid pro quo stricto sensu is not always a sine quo non of a fee."

The learned Judges further observed thus:

"Our attention has been drawn to the observations in *Kewal Krishan Puri and Others Vs. State of Punjab and Another*, :

The element of quid pro quo must be established between the payer of the fee and the authority charging it. It may not be the exact equivalent of the fee by a mathematical precision, yet, by and large or predominantly, the authority collecting the fee must show that the service which they are rendering in lieu of fee is for some special benefit of the payer of the fee.

To our mind, these observations are not intended and meant as laying down a rule of universal application. The Court was considering the rate of a market fee, and the question was whether there was any justification for the increase in rate from Rs.2/- per every hundred rupees to Rs.3/-. There was no material placed to justify the increase in rate of the fee and, therefore, it partook the nature of a tax. It seems that the Court proceeded on the assumption that the element of quid pro quo must always be present in a fee. The traditional concept of quid pro quo is undergoing a transformation."

17. A three Judge bench of the Supreme Court in *Sreenivasa General Traders v. State of A.P.* (supra) observed thus:

"In the ultimate analysis, the Court held in *Kewal Krishan Puri*'s case, supra that so long as the concept of fee remains distinct and limited in contrast to tax, such expenditure of the amounts recovered by the levy of a market fee cannot be countenanced in law. A case is an authority only for what it actually decides and not for what may logically follow from it. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law but governed or qualified by the particular facts of the case in which such expressions are to be found. It would appear that there are certain observations to be found in the judgment in *Kewal Krishan Puri*'s case, supra, which were really not necessary for purposes of the decision and go beyond the occasion and therefore they have no binding authority though they may have merely persuasive value. The observation made therein seeking to quantify the extent of correlation between the amount of fee collected and the cost of rendition of service, namely: "At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services in the market to the payer of fee", appears to be an obiter,"

The learned Judges went on observing thus:

"A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. It is now increasingly realised that merely because the collections for the service rendered or grant of a privilege or licence are taken to the consolidated fund of the State and not separately appropriated towards the expenditure for rendering the service is not by itself decisive."

18. In *City Corporation of Calicut Vs. Thachambalath Sadasivan and Others*, , the Supreme Court on a consideration of a catena of decisions on the point observed:

"It is thus well-settled by numerous recent decisions of this Court that the traditional concept in a fee of *quid pro quo* is undergoing a transformation and that though the fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere causal relation may be enough. It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee."

19. Again in *Amar Nath Om Prakash and Others Vs. State of Punjab and Others*, , the Supreme Court in respect of the observations made in *Kewal Krishan v. State of Punjab* (supra) stated thus:

"At least a good and substantial portion of the amount collected on account of fee may be in the neighbourhood of two-thirds or three-fourths must be shown with reasonable certainty as being spent for rendering services in the market to the payer of fee, appears to be an obiter."

20. In fact, in *Southern Pharmaceuticals & Chemicals v. State of Kerala* (supra), the Apex Court while discussing about the merger of the collections into consolidated fund, observed with reference to (1954) SCR 1005 (supra), thus:

"But the attention of the Supreme Court docs not appear to have been called to Article 266 which requires that all revenues of the Union of India and the States must go into their respective consolidated funds and all other public moneys must go into the respective public accounts of the Union and the States. Its submitted that if the services rendered are not by a separate body like the Charity Commissioner, but by a Government department, the character of the imposition would not change because under Article 226 the moneys collected for the services must be credited to the consolidated fund. It may be mentioned that the element of *quid pro quo* is not necessarily absent in every tax.""

To the same effect are the observations of the three Judge Bench in *Sreenivasa*

General Traders v. State of A.P. (supra) which are as follows:

"There is no generic difference between a tax and a fee. Both are compulsory exactions of money by public authorities. Compulsion lies in the fact that payment is enforceable by law against a person in spite of his unwillingness or want of consent. A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual service rendered by that authority to each individual who obtains the benefit of the service. It is now increasingly realised that merely because the collections for the services rendered or grant of a privilege or licence are taken to the consolidated fund of the State and not separately appropriated towards the expenditure for rendering the service is not by itself decisive. Presumably, the attention of the Court in the Shirur Mutt case was not drawn to Article 266 of the Constitution, The Constitution nowhere contemplates it to be essential element of fee that it should be credited to a separate fund and not to a consolidated fund. It is also increasingly realised that the element of quid pro quo in the strict sense is not always a sine qua non for fee. It is needless to stress that the element of quid pro quo is not necessarily absent in every tax: Constitutional Law of India by H.M Seervai, Vol.2, 2nd Edn., page 1252, paras 22, 39.

Viewed from this perspective, the conclusion is inevitable that the observation made in Kewal Krishan Puri and Others Vs. State of Punjab and Another, , that "At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-thirds, must be shown with reasonable certainty as being spent for rendering services in the market to the payer of fee"" was not intended to lay down a rule of universal application but it was a decision which must be confined to the special facts of that case. Otherwise it may affect the validity of many similar marketing legislations undertaken during the past 50 years relating to the regulation of purchase and sale of agricultural produce, livestock and products of livestock and the establishment of markets in connection therewith and the levying of a market fee in lieu thereof towards the cost of rendering such service by different States on the recommendations made in the Report of the Royal Commission on Agriculture in India, 1928 and of those of many high-powered bodies of experts constituted from time to time by the Centre and the different States. In the subsequent decision in Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, , Untwalia, J. speaking for the Court has considerably narrowed down his observations in Kewal Krishan Puri's case (at page 116 of SCR = at page 1129 of AIR) of the report saying that "the fee realized from the payer of the fee has, by and large, to be spent for his special benefit and for the benefit of other persons connected with the transactions of purchase and sale in the various Mandis." If the quantum of quid pro quo was to be quantified to the extent as indicated in Kewal Krishan Puri's case for the levy of a fee or cess, it may affect many other beneficial legislations brought in by the Centre and the States for rendering service to a specified area or a specified class of persons or

trade or business in any local area. There are many other observations in Kewal Krishan Puri's case which were really not necessary for purposes of the decision in that case and need to be clarified. The word "fee" cannot be said to have acquired a rigid technical meaning during the past three decades and should not be given such a narrow construction."

21. The learned Judges observing that the observations made in Kewal Krishan Puri v. State of Punjab (supra), that "at least a good and substantial portion of the amount collected on account of fee may be in the neighbourhood of two-thirds or three-fourths must be shown with reasonable certainty as being spent for rendering services in the market to the payer of fee, appear to be an obiter", however went on as under:

"However, correlationship between the levy and the services rendered expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship"" between the levy of the fee and the services rendered. If authority is needed for this proposition, it is to be found in the several decisions of the Court drawing a distinction between a "tax" and a "fee". See: The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., ; H.H. Sudhundra Thirtha Swamiar Vs. Commissioner For Hindu Religious and Charitable Endowments, Mysore, ; The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others, ; H.H. Shri Swamiji of Shri Amar Mutt and Others Vs. Commissioner, Hindu Religious and Charitable Endowments Department and Others, ; Southern Pharmaceuticals and Chemicals, Trichur and Others Vs. State of Kerala and Others, , and Municipal Corporation of Delhi and Others Vs. Mohd. Yasin, .

22. Even in the Sirsilk Ltd. Vs. Textiles Committee and Others, , the Apex Court observed thus:

"When the levy of the fee is for the benefit of the entire textile industry, there is sufficient quid pro quo between the levy recovered from the appellants and the petitioners and the services rendered to the industry as a whole. In the premises, the principles laid down by this Court in Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others, , are clearly attracted."

23. Therefore in view of the settled principles of law, the argument of the learned Counsel for the petitioners that there should be benefit to the petitioners before the fee is levied and that the petitioners are no way benefitted with the rural development like laying the roads and bridges or creating facilities for storing agricultural produce or maintaining public distribution system, cannot be accepted. In fact in the instant case the fund raised u/s 7 of the Act at the rate of 5 per cent on the ad valorem on the quantum of purchase of goods, to be more precise paddy and cashewnut is being administered for the purposes specified u/s 9 by a Board constituted u/s 3 of the Act, of which the Chief Secretary to the Government is the Chairman with six Secretaries, including Principal Secretary to

Revenue, Food & Civil Supplies, Finance & Planning, Panchayat Raj and Rural Development, in addition to Commissioner, Commercial Taxes and Director, Civil Supplies as Ex-Officio Member. The constitution of the Board with senior IAS Officers who have sufficient experience and knowledge about rural development, including laying of roads and bridges, improving storage facilities and maintaining public distribution system, cannot be said to be improper or unreasonable.

24. A similar enactment was brought out by the Haryana Legislature called the Haryana Rural Development Act (6 of 1986), whose Constitutional validity was questioned before the Punjab and Haryana High Court. A Division Bench of its decision in Shiv Dayal Singh Ramesh Chander and Others Vs. State of Haryana and Others, , dismissed a Batch of writ petitions. The provisions of the Haryana Rural Development Act are in para maleria or identical with the provisions of the present Act. The relevant provisions are shown below :

"Haryana Act: 1986: A.P. Act: 1996:

1.

An Act to provide for the establishment of the Haryana Rural Development Fund. Administration Board for augmenting agricultural production and improving its marketing and sale.

1.

3(1) Establishment of Board, its constitution, powers and duties:

The Government may by notification for exercising powers conferred on and performing the functions and duties assigned to the Board by or under this Act, establish the A.P. Rural Development Board.

2.

2(3)"rural area" means area other than the area of a Municipality administered under the Haryana Municipal Act, 1973.

2.

Section 2(1)(e) "area" means area other than:

(i)

local area included in a Municipality.

(ii)

local area constituted to be a city.

(ii)

area declared as an urban area; and

(iv)

place declared to be Cantonment under the Cantonment Act, 1924.

3.

6(1) Constitution of fund: There shall be constituted a fund called the Haryana Rural Development Fund which shall vest in the Board.

3.

8(1) There shall be constituted a fund to be called " "The Andhra Pradesh Rural Development Fund" " which shall vest in the Board.

4.

6(5) The Fund shall be applied by the Board to meet the expenditure incurred in the rural areas in connection with the development of roads, establishment of dispensaries, making arrangements for water supply, sanitation and other public facilities, welfare of agricultural labour, conversion of the notified areas by utilising technical know-how there to and bringing about other necessary improvements therein, construction of godowns and other places of storage, for the agricultural produce brought in the market area for sale/purchase and the construction of rest houses equipped with all modern amenities, to make the stay of visitors (both sellers and purchasers) in the market area comfortable and for any other purpose which may be considered by the Board to be in the interest of and for the benefit of the person paying the fee. The Fund may also be utilised by the Board to meet the cost of administering it.""

4.

Section 9: The Fund shall be applied for the purposes herein specified:

(i)

to provide and accelerate comprehensive rural development including the construction of rural roads and bridges.

(ii)

to augment storage facilities for storing agricultural produce; and

(iii)

for maintaining and strengthening of public distribution system,"

Similarly, Punjab Legislature also passed Punjab Rural Development Act, 1987 which was also questioned before the High Court. Following the judgment reported in Shiv Dayal Singh v. State of Haryana (supra), the High Court dismissed the said writ petitions. Again questioning the said judgment, writ petitioners filed SLPs in the Supreme Court which were later withdrawn. So also the Punjab Agricultural Produce Markets Act, 1961; Haryana Rural Development

Act, 1986 were questioned on the ground of absence of sufficient quid pro quo between fee realised and the services rendered. A Full Bench of the Punjab and Haryana High Court by its decision in M/s. Subhash Chander Kamlesh Kumar Vs. State of Punjab and others, , dismissed the said batch. The said decision was again challenged in the Supreme Court and the Supreme Court by its decision in Kishanlal Lakshmi Chand v. State of Haryana, 1993 Supp (4) SCC 461, while dismissing the appeal affirmed the decision of the Full Bench. The Three Judge Bench while disposing the appeal observed thus:

"The market area was defined to mean any area defined u/s 6 of the Punjab Agricultural Produce Markets Act, 1961. The principal market yard and sub-market yard were also demarcated in Section 7 thereof. The market also was similarly defined to mean market established and regulated under that Act for the notified market area including market proper, principal market yard and sub-market yard. Section 6(5) of the Act enjoins the Haryana Rural Development Fund Administration Board established and constituted u/s 3 of the Act to apply the fund "to meet the expenditure incurred in the rural area in connection with the development of roads, establishment of dispensaries, making arrangements for water-supply, sanitation and other public facilities, welfare of agricultural labour, conversion of the notified market areas falling in rural area as defined under this Act into model market areas by utilising technical know-how thereto and bringing about other necessary improvements therein, construction of godowns and other places of storage, for the agricultural produce brought in the market area for sale/purchase and the construction of rest houses equipped with all modern amenities, to make the stay of visitors (both sellers and purchasers) in the market area comfortable and for any other purpose which may be considered by the Board to be in the interest of and for the benefit of the persons paying the fee. The fund may also be utilised by the Board to meet the cost of administering it. "Rural area was defined to mean area other than the area of Municipality administered under the Haryana Municipal Act, 1973. It would thus be clear that the levy of the fee and collection u/s 5 would go into the fund administered by the Board which would be expended only for the purposes envisaged under sub-section (5) of Section 6 extracted hereinbefore."

25. Therefore, in the teeth of the Supreme Court's Judgments referred to above upholding similar enactments, it is too late in the day for the petitioners to challenge similar provisions of the present Act, or contend that what is sought to be levied is only tax and not fee.

26. It is next contended by Sri S. Krishna Murthy, learned Counsel appearing for the petitioners that the impugned Act is violative of Article 286 of the Constitution of India as well as Sections 14 and 15 of the Central Sales Tax Act. According to the learned Counsel, Article 286 places an embargo on imposition of any tax on the sale or purchase of goods where such sale or purchase takes place outside the State or in the course of import of goods into or export of goods out of Indian territory. Learned Counsel draws support for his contention

to the provisions of Sections 14 and 15 of the Central Sales Tax Act. According to Section 14, paddy is declared to be goods of special importance and u/s 15, tax payable in respect of any sale or purchase of such goods inside the State shall not exceed 4 per cent. This argument proceeds on the premise that the impost in question is a tax which was already negated. The question is whether the State Legislature can impose a cess or fee in respect of the declared goods by the Parliament under Central enactment.

27. Even Article 286 of the Constitution imposes restriction on the State Government for levy of any tax on the sale or purchase of goods which took place outside the State or in the course of importing or exporting of goods out of Indian territory. It is true that the State Legislature cannot trench upon the field reserved for the Parliament under List-I of the VII Schedule. As already seen, Entries 13 and 14 of List-II as well as Entry 27 of the said list, clearly authorise the State Legislature to make appropriate legislation. Therefore, it cannot be said that the State Legislature has trenched upon the field reserved for the Parliament. From this decision reported in *Southern Pharmaceuticals & Chemicals v. State of Kerala* (supra), the following passage can be usefully extracted.

"In determining whether an enactment is a legislation "with respect to" a given power, what is relevant is not the consequences of the enactment on the subject-matter of whether it affects it, but whether, in its pith and substance, it is a law upon the subject-matter in question. The Central and the State Legislations operate on two different and distinct fields. The Central Rules, to some extent, trench upon the field reserved to the State Legislature, but that is merely incidental to the main purpose, that is, to levy duties of excise on medicinal and toilet preparations containing alcohol. Similarly, some of the impugned provisions may be almost similar to some of the provisions of the Central Rules, but that does not imply that the State Legislature had no competence to enact the provisions."

The Supreme Court quoted with approval the observations of Sir Maurice Gwyer, C.J. in the *Subramanyam Chettiar* case, AIR 1941 FC 47.

"It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, and the different provisions of the enactment may be so closely intertwined that blind observance to a strictly verbal interpretation would result in a large number of states being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee, whereby the impugned statute is examined to ascertain its "pith and substance", or its "true nature and character", for the purpose of determining whether it is legislation with respect to matters in this list or in that".

The doctrine of "pith and substance" evolved by the Privy Council has been followed by this Court throughout."

Finally, the Supreme Court observed that "even if there are some provisions

seemingly overlapping or encroaching upon the forbidden field that does not warrant striking down the impugned Act as ultra vires.

28. A Constitution Bench of the Supreme Court in *Synthetics & Chemicals Ltd v. State of U.P.*, 1991 STC 271, enunciated the following guidelines :

"(i) legislative entries are to be liberally construed. But when a topic is governed by two entries, then they have to be reconciled. It cannot be that one entry is to be liberally construed and the other entry is not to be liberally construed

(ii) under the Constitutional scheme of division of powers under legislative Lists, there are separate entries pertaining to taxation and other laws. A tax cannot be levied under a general entry.

(iii) a Constitution is an organic document and has to be so treated and construed.

(iv) if there is a conflict between the entries, the first principle is to reconcile them. But the Union power will prevail by virtue of Article 246 (1) and (3). The words "notwithstanding" and "subject to" are important and give primacy to the Central legislative power."

Therefore, if there is any slightest conflict between the entries between the Union List and the State List, the same has to be reconciled. Narrow pedantic approach in interpretation of Constitutional provisions, runs counter to the scheme and intent of the Constitution as it does not sub-serve the National development and economic growth of the country.

29. Following the above decisions, we cannot hold that the State Legislature has trespassed upon the field occupied by the Parliament. Even assuming there is any apparent conflict, both operate in different fields and as such, the question of striking down any of the provisions contained in the impugned legislation does not arise.

30. Sri B. Krishna Reddy, learned Counsel appearing for some of the writ petitioners contended that the services contemplated under the impugned Act have already been taken care of by the A.P. Panchayat Raj Act, Mandal Parishad Act and Zilla Parishad Act, and therefore, the impugned Act is redundant. In other words, his contention is the purpose for which the impugned legislation was enacted has already been achieved, and therefore a separate enactment like the one in question is unnecessary and superfluous. Answer to these submissions is found in the Full Bench Judgment of the Punjab and Haryana High Court reported in *Ms. Subhash Chander Kamlesh Kumar v. State of Punjab* (supra), wherein it is observed:

"The stark reality is that India continues to be amongst the poorest countries in the world. The conditions in our markets, especially those situated in semi-urban or rural areas continue to be primitive and woefully inadequate. The level of development in the area of marketing leaves much to be desired. Coupled with

this is an ever rising trend in cost of services, may be the salary bill of the employees or the cost of acquiring land or construction of building or roads."

As this decision of the Full Bench has been upheld by the Apex Court, we cannot take exception to this view, and accordingly, we have no hesitation in holding that the impugned Act is neither redundant nor superfluous, on the ground that the purpose for which it was enacted has been achieved by some other Act.

31. A feeble contention has been raised by the petitioners that the Act in question offends Articles 301 and 304 (B) of the Constitution of India. It is understandable how the provisions of the impugned Act will interfere with the trade and commerce or intercourse within the State. These Articles can have application only when higher rate of tax is levied on the goods purchased outside the State in comparison with the goods manufactured and sold in the State. In fact under the impugned Act the impost or cess is only levied on the goods produced in the State and as such there is no substance in this contention.

32. It can be noticed that there is no burden cast on the petitioners, being traders, as they are not paying the cess from out of their pockets, but they collect the same from the Food Corporation of India or A.P. Civil Supplies Corporation, or other Governmental Organisations; as such they do not suffer any burden. After all, they collect the cess from those Corporations in the name of the State and accordingly pass on the same to the State. Therefore, they do not have to feel the pinch of it.

33. Sri S. Krishna Murthy, learned Counsel appearing for some of the writ petitioners cited several decisions before us in his endeavour to show that the impost in question is only a tax and not a fee; that the field was already occupied by the Parliament and as such, the State Legislature is denuded of its power to trench upon it, or has no legislative competence; and that in any event the rate of tax prescribed is excessive.

34. In view of the recent Supreme Court decisions, for which reference is already made above, which are directly on the point and with reference to levy of cess on agricultural produce, we deem it unnecessary to refer to those decisions any more.

35. For all the above reasons both the impugned Act as well as demand notices, issued pursuant to the impugned Act, cannot be held to be illegal. The writ petitions, therefore, fail and are accordingly dismissed. No costs.